

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 599 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

STATE OF GUJARAT

Versus

LALITKUMAR LAXMISHANKER RAVAL

Appearance:

1. Criminal Appeal No. 599 of 1986
MR IM PANDYA, APP for Petitioner No. 1
MR MJ BUDDHBHATTI for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 11/11/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

1. The State of Gujarat has filed this appeal under section 378 of the Code of Criminal Procedure challenging the judgment and order dated 24.1.1986 passed in Special Case No.1 of 1985 by the learned Special Judge, Rajkot acquitting the respondent accused of offence punishable under section 161 of IPC and section 5(2) of Prevention of Corruption Act.

2. The case of the prosecution, in brief, can be stated as under:

The respondent Lalitkumar Laxmishanker Raval, at the relevant time, was working as Drugs Inspector at Rajkot and was discharging his duties as a public servant. The complainant Kanjibhai Raiyabhai was having a medical store known as Anand Medical Store at Upleta town. The accused was conducting certain inquiry in respect of the bills issued by the said Medical Store which were allegedly not countersigned by a qualified person. It is the prosecution case that during inquiry, the accused had gone to the said Medical Store on 15.3.1984 and met the complainant and allegedly demanded Rs. 5000/- as illegal gratification for closing the chapter in respect of the abovesaid case. It appears that the complainant, on 30.4.1986, came to Rajkot and met the accused at his residence and the matter was settled for an amount of Rs. 3000/-. The accused had allegedly gone to the shop of the complainant situated at Upleta and accepted an amount of Rs. 3000/-. It is the further case of the prosecution that on 6.5.1984, the complainant had gone to ACB Office at Rajkot and a formal complaint was lodged. On 7.5.1984, at 5.30 a.m., the panchas were called by Inspector Mr.Manjaria. The complainant produced currency notes of Rs. 3000/- which were smeared with anthracene powder and were inserted in the hand purse of the complainant. The first part of the panchanama was completed in the Office of ACB. Thereafter, the panchas, the complainant and the raiding party including Inspector Mr. Manjaria and PSI Mr. Dave had gone to Upleta. According to the prosecution case, the accused had reached the shop of the complainant at 5.30 p.m. on 7.5.1984. There he had made a demand of Rs. 3000/- and currency notes were handed over to him by the complainant. It is the prosecution case that the accused had opened the file lying on his brief case and currency notes were inserted in the file. The complainant gave signal by ordering a cup of tea and the raid was carried out. The muddamal currency notes were recovered from the file of the accused and the ultra violet lamp rays had shown presence of anthracene powder

"(1) That the complainant is the convener of 'Bhrashtachar Nivaran Samiti', an association of about 50 persons

formulated to fight corruption in all walks of life.

- (2) That the complainant and his brother were repeated defaulters and on every occasion of checking by the Drugs Department, they were found guilty of various breaches.
- (3) That the accused was the complainant in a case filed against the brother of the complainant at Upleta Court.
- (4) That the accused has already submitted adverse report to the higher authority and the complainant was given a show cause notice on the basis of the report.
- (5) That the accused was not in a position to favour the complainant.
- (6) That the complainant has not given the date of the first meeting and the initial demand in the complaint or during the examination in chief.
- (7) That the complainant has given 15.3.1984 as the date of first meeting and initial demand during the cross examination and that also relying upon the show cause notice which speaks of checking of the shop of the complainant on the said date.
- (8) That the complainant himself has admitted that the accused might have left Upleta at about 12.45 on 15.8.1984. If it is so, there is no possibility if demand at 5.30 on the said date.
- (9) That Ex. 26 the show cause notice says that the accused had visited the shop of the complainant in presence of only two persons namely Manubhai and Aba Ahmed Ismail.
- (10) That Ex. 45 the Tour Diary shows that the accused had left Upleta at 12.45 p.m. on 15.3.1984.
- (11) That the second meeting had taken place allegedly at the instance of the complainant after 1 1/2 months i.e. on 30.4.1984.
- (12) That if the initial meeting on 15.3.1984 cannot be accepted, the second meeting cannot be said to have taken place.
- (13) That according to the case of the prosecution, the accused had given no time at which he would go to the shop of the complainant.
- (14) That the complainant knew well that the accused was to come to Upleta in

connection with Court case.

- (15) That the panch witness no.1 was sitting in the shop, out of the counter and at some distance from the cabin and was not able to hear or see in the cabin.
- (16) That the panch witness has admitted that he had not left his chair from 9.30 a.m. till the signal was given after 5.30 p.m. which would show that he was not able to see the passing of currency notes.
- (17) That there are different versions given by the complainant and the panch as to whether the accused was sitting on the chair or a bench.
- (18) That same is the position regarding the position of brief case and file.
- (19) That the case of the prosecution is that the accused had opened the bag, had taken out the file and had placed the same on the bag and thereafter had placed the currency notes in the file. But the complainant denies this case.
- (20) That the panch witness does not depose regarding the open of the brief case and taking out of the file.
- (21) That Inspector Mr.Manjaria has said that the brief case was in the lap of the accused which is a new version.
- (22) That even it was the case of the prosecution that complainant had given out the currency notes with his right hand only, his left hand fingers had also shown presence of anthracene powder which makes the defence theory more probable.
- (23) That though it is the case of the prosecution that accused had accepted the currency notes with his right hand, thumb of that hand had not shown the presence of powder which makes the prosecution case improbable.
- (24) That though it is the case of the prosecution that notes were inserted in the file, the first cover page in large portion was found to have the anthracene powder which makes the defence case more probable that notes were placed in the folded file by the complainant.
- (25) That the signal was given after fifteen crucial minutes of the entry of the accused in the shop.
- (26) That probably the accused had written in

the page no.9 (backside) after entering into the cabin.

(27) That as admitted by panch witness, the panchanama was written out as per the say of Inspector Mr. Manjaria.

(28) That there are overwritings in the panchanama and gaps have been filled in later on which makes the panchanama doubtful.

(29) That the panchas were 'selected panchas' and the say of Mr. Manjaria and panch witness no.1 regarding his calling as panch is completely untrustworthy."

9. We called upon learned APP Mr. Pandya to dislodge the above grounds. Suffice it to say that the learned APP is not in a position to dislodge any of the above grounds. The contentions advanced by the learned APP have also been considered and dealt with in the above grounds. Suffice it to say that we are in total agreement with the reasonings given by the learned Trial Judge. After minutely considering the evidence on record, we are of the opinion that the prosecution has failed to establish that the accused had demanded illegal gratification of Rs. 5000/- on 15.3.1984 at Upleta and later on during the meeting on 30.4.1984, the accused had agreed to accept the amount of Rs. 3000/- at Upleta. Likewise, it is also not established with the help cogent, reliable and unimpeachable evidence that the accused had demanded and accepted currency notes of Rs.3000/- on 7.5.1984 at 5.30 p.m. in the shop of the complainant at Upleta.

10. The Supreme Court, in the case of State of Karnataka Vs. Hemareddy, AIR 1981 SC 1417 has held that it is not the duty of the Appellate Court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court. Expression of general agreement with reasons given by the Court the decision of which is under appeal, will ordinarily suffice. Since we are in total agreement with the reasonings of the learned Trial Judge and since we confirm the order of acquittal passed by the trial court, as held by the Supreme Court in the aforesaid decision, it is not necessary for us to repeat narration of evidence and/or to reiterate the reasons given by the trial court.

11. In the result, this appeal fails and is dismissed. Bail-bonds stand cancelled.

(Kshitij R.Vyas,J.)

(K.M.Mehta,J.)

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